

Office of

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: August 30, 1993

TO: Larry Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: San Diego Municipal Code ("SDMC") section 24.1307:
Proposed Modification of the term "Return to
Service"

Concerns have arisen over the definition of the term "return to service" found in SDMC section 24.1307.F

This section was initially enacted in 1983 and numbered 24.0313. It was amended and renumbered pursuant to 0-17938, New Series, adopted July 12, 1993.

This section allows a member of the San Diego City Employees' Retirement System to purchase service credit for approved leaves of absence under certain conditions. For purchases of service credit of one year or less, this section provides in pertinent part:

Notwithstanding the provisions of Section 24.0103 t. and this Division, any Member granted an approved leave of absence without pay shall have the right, upon his or her return to City service, and upon request by said Member to obtain service credit for a period of up to one year of such absence by paying into the Retirement System an amount determined by the Board to be the equivalent of the employee cost of that service. (Emphasis added.)

In the past, we have been asked to clarify the meaning of the term "return to service." Specifically, we have been asked whether this term means a physical return to active employment or

whether it means a return to an active payroll status wherein retirement contributions are made. Not finding any definition in the City Charter, SDMC or Board Rule and guided by past practice and procedure, we have previously held that "return to service" for purposes of purchasing service credit includes a return to a payroll status wherein retirement contributions are made.

In this regard, we have relied on information provided by staff. The examples provided by staff involved members returning to payroll for a short time, as little as one day, to establish eligibility for the purchase of service credit. Specifically, a return to payroll was used to establish eligibility to purchase Long Term Disability time and/or leave without pay time to establish eligibility for industrial or nonindustrial retirements. A return to payroll has also been used to extend service credit past July 1, 1992, to establish eligibility for higher benefits effective on that date. The service credit purchased in the examples provided by staff ranged from 3 months to 5.1 years.

With respect to unclassified employees, we are aware of at least one situation involving our Department where a former employee was carried on "Red A" (without pay) for just under one year. The employee, working elsewhere during this period of time, subsequently purchased service credit totaling eight (8) months and eight (8) days. He later retired on a service retirement (age 55 with 20 years of service). The auditor has expressed concerns over the use of "Red A" in this manner to accomplish a service credit purchase. He seeks the adoption of changes to SDMC section 24.1307 to prevent a service credit purchase in the manner outlined above.

In response, and with respect to "Red A," we note that the approval process for leaves of absence for the unclassified service rests squarely with the sound discretion of the respective appointing authority. With respect to purchases of service credit, however, the Board could recommend to the City Council the need for legislative attention to the "return to service" requirement set forth in SDMC section 24.1307. If appropriate and desired, this section could be amended to restrict purchase of service credit to those situations where the member returns to active employment.

Your consideration of this matter is appreciated. We remain available to provide whatever assistance is requested.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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